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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO.   |
|---|-------------|----------------------|---------------------|--------------------|
| 09/719,415  | 04/04/2001  | Heine Hansen         | 12012/121412        | 8314               |
| 7590  | 10/19/2004  |                      | EXAMINER            |                    |
| Bryan Cave LLP<br>1290 Avenue of the Americas<br>New York, NY 10104 |             |                      |                     | STOCK JR, GORDON J |
|   |             | ART UNIT             |                     | PAPER NUMBER       |
|   |             | 2877                 |                     |                    |

DATE MAILED: 10/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                            |                     |  |
|------------------------------|----------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b>     | <b>Applicant(s)</b> |  |
|                              | 09/719,415                 | HANSEN, HEINE       |  |
|                              | Examiner<br>Gordon J Stock | Art Unit<br>2877    |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 28 July 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-7,9-27 and 29-43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 2-7,9,10,13-16,18,19,21-27,29,30,33-36 and 38-43 is/are allowed.
- 6) Claim(s) 11,12,17,31,32 and 37 is/are rejected.
- 7) Claim(s) 1 and 20 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 04 April 2001 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the spectral lamp, a neon lamp of claims 40-43 feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### *Claim Objections*

2. **Claim 1** is objected to for the following: on line 7 'A<sub>m</sub>(λ) the' should read --A<sub>m</sub>(λ) of the--. Correction is required.

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3. **Claim 20** is objected to for the following: on line 7 ' $B_i =$ ' should read --  $B_i (\lambda) = --$ ; and the variable 'N' of line 10 is not defined. Corrections required.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. **Claims 11, 12, 17, 31, 32, and 37** are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Specifically, the terms of **claims 11, 12, 31, and 32** of  $s_{2\text{est}}/s_{1\text{est}}$  and  $s_{2\text{qc}}/s_{1\text{qc}}$  appear to be new matter, for the disclosure on page 16 lines 4-24 does not adequately disclose those particular ratios for determining  $Q_{\text{est}}$  and  $Q_{\text{qc}}$ . In addition, on page 13 the only  $s_1$  and  $s_2$  disclosed are assigned values from  $c_{\text{qc}}$  both denoted by the terms ' $s_1$  and  $s_2$ ' (equations 14 and 15). **Claims 17 and 37** are rejected for depending upon rejected base claims.

***Allowable Subject Matter***

6. **Claims 2-7, 9, 10, 13-16, 18, 19, 21-27, 29, 30, 33-36, and 38-43** are allowed.

7. **Claims 1 and 20** would be allowable if rewritten to overcome the objections above.

As to **claim 1**, the prior art of record, taken alone or in combination, fails to disclose or render obvious in a quality control method for a spectrophotometer comparing a wavelength shift with an assigned wavelength shift, in combination with the rest of the limitations of **claims 1-7, 9, 10, 13-16, and 18-20**.

As to **claim 21**, the prior art of record, taken alone or in combination, fails to disclose or render obvious in a spectrophotometer the processor is adapted to compare a wavelength shift with an assigned wavelength shift, in combination with the rest of the limitations of **claim 21-27, 29, 30, 33-36, 38-43**.

*Response to Arguments*

8. Applicant's arguments, see Remarks, filed July 28, 2004, with respect to the rejection of **claims 9-10, 16, 29-30, and 36** under 35 U.S.C. 112, second paragraph and the rejection of **claims 1-7, 9, 10, 13-16, 18, 21-27, 29, 30, 33-36, 40 and 41** under 35 U.S.C. 103(a) and have been fully considered and are persuasive. Therefore, because of the persuasiveness of the arguments and upon amendment of the claims the rejections have been withdrawn. However, due to the amendment of the **claims 11, 12, 31, 32** a new grounds of rejection for these claims has been made. See 35 U.S.C. 112 first paragraph rejection above. The examiner does not find the arguments for claims 11, 12, 31, and 32 persuasive because there is not adequate support in the disclosure on page 16 for the terms:  $s_{2est}/s_{1est}$  and  $s_{2qc}/s_{1qc}$ . In addition, as for the arguments with respect to the objections to the specification and drawings, the Examiner has found those arguments persuasive except for the argument concerning the spectral lamp, neon lamp, of claims 40-43 not shown in the drawings (see drawing objection above). Specifically, the spectral lamp 'with at least one spectral line' in the range 480-670 nm is disclosed as a neon glow lamp and not a halogen lamp (not shown) in Fig. 3 (page 39 lines 3-10; page 42, lines 8-20).

***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

***Fax/Telephone Numbers***

If the applicant wishes to send a fax dealing with either a proposed amendment or a discussion with a phone interview, then the fax should:

- 1) Contain either a statement "DRAFT" or "PROPOSED AMENDMENT" on the fax cover sheet; and
- 2) Should be unsigned by the attorney or agent.

This will ensure that it will not be entered into the case and will be forwarded to the examiner as quickly as possible.

*Papers related to the application may be submitted to Group 2800 by Fax transmission. Papers should be faxed to Group 2800 via the PTO Fax machine located in Crystal Plaza 4. The form of such papers must conform to the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The CP4 Fax Machine number is: (703) 872-9306*

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gordon J. Stock whose telephone number is (571) 272-2431.

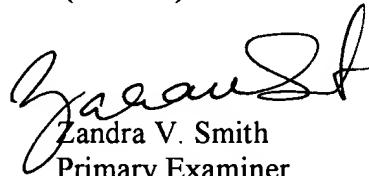
The examiner can normally be reached on Monday-Friday, 10:00 a.m. - 6:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory J. Toatley, Jr., can be reached at 571-272-2800 ext 77.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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gs

October 12, 2004

  
Sandra V. Smith  
Primary Examiner  
Art Unit 2877